



Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

COMMENTS OF
THE INTERNET COMMERCE COALITION

CAN-SPAM ACT RULEMAKING
Project No. R411008

(Advance Notice of Proposed Rulemaking)

I. Introduction

The Internet Commerce Coalition ("ICC") submits these supplemental comments in response to the Commission's request regarding its report mandated in Section 11(1) of the CAN-SPAM Act, Pub. L. No. 108-187 regarding offering a "bounty" to those who supply information about violations of the Act. ICC members include leading Internet and e-commerce companies and trade associations, including AT&T, BellSouth, Comcast, eBay, MCI, SBC Communications Inc., TimeWarner/AOL, Verizon, the U.S. Telecomm Association, CompTel, and the Information Technology Association of America, who have extensive experience working to protect consumers from spam, and suing more than 150 spammers.

Although we wish this proposal would help in addressing the spam problem, on balance, we believe that it would detract from, rather than enhance, the battle against spam.

First and most importantly, the proposal would actually create disincentives to sharing private sector information-sharing regarding spammer. Currently, ISPs and organizations such as Spamhaus share information identifying spammers quite freely, consistent with electronic privacy laws. We are concerned that if the Commission offered a bounty “of not less than 20 percent of the total civil penalty collected for a violation of this Act,” see section 11(1)(A), this would create a perverse incentive for individuals who currently provide helpful information regarding spammers to hoard that information and share it only with the Commission, thereby hurting ISP efforts to block spam and pursue spammers.

Second, we are concerned that determining the “first person” to identify a spammer would waste valuable Commission resources in receiving, storing and dating fragmentary information regarding spammers and resolving disputes between individuals who each claim to have been the first to identify the spammer. Because of complexity of locating spammers by means of fragments of information and confirming leads provided by others, the Commission may well not know at the time of receiving information whether it in fact identifies a spammer, much less whether the Commission will in fact bring an enforcement action against the alleged spammer.

Third, we do not believe that this incentive system would have much effect on ISPs’ incentives as regards reporting information to the Commission or bringing CAN-SPAM Act enforcement actions—ISPs have incentives to do both. Conversely, we doubt that implementing a financial reward system would significantly increase the number of people attempting to track down spammers. This is because the major forensic challenges locating spammers make this

endeavor very difficult for people who do not have technical expertise, access to network information, and knowledge of spammer tactics. What is more, the limited chances that the Commission will actually bring an enforcement action against a spammer identified by a private party would likely make hiring experts to engage in this task an unattractive proposition.

Finally, we have some concerns that a reward system would create incentives to engage in illegal activities such as hacking in an effort to obtain information identifying a spammer.

We thank you for considering our views, and would be pleased to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James J. Halpert', with a stylized flourish at the end.

James J. Halpert
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